NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH W. OATMAN, JR.,	)	
	)	
Plaintiff-Appellant,	)	
	)	No. 02-35278
v.	)	
	)	D. C. CV-01-06162-MA
JO ANNE B. BARNHART, Commissioner of Social Security,	)	
	)	
Defendant-Appellee.	)	MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Submitted September 12, 2003**
Portland, Oregon

BEFORE: ALDISERT,*** GRABER and GOULD, Circuit Judges.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided for by Ninth Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision withiut oral argument. See Fed. R. App. P. 34 (a)(2).

*** Ruggero J. Aldisert, Senior Judge, United States Court of Appeals for the Third Circuit, sitting by designation.

I.

In support of his claim for Social Security benefits, Joseph W. Oatman, Jr. relied primarily on two sources – Robert Kurlychek, Ph.D., a psychologist, and Ms. Lynn Swisher, a student who described herself as studying for a master's degree in marriage and family therapy. Dr Kurlychek is an examining source, not a treating source. We are satisfied with the district court's conclusion that the ALJ provided a clear and convincing explanation for rejecting Dr. Kurlychek's opinion – specifically, the four reasons set forth in its opinion. ER at 284-285.

We also adopt the district court's detailed justification of the ALJ's determination that Lynn Swisher, a college student-intern, was a medically unacceptable source because she was a student intern and did not work in conjunction with a physician. Id. at 285-286.

II.

In addition, we conclude that the ALJ evaluated the opinion of the state agency physicians. The ALJ's residual functional capacity (RFC) assessment accounted for the moderate limitations in working with the general public, which the state agency physicians found. The ALJ properly accepted the testimony of the vocational expert that the appellant retained the ability to perform a significant number of jobs in the national economy despite his impairment – specifically, the

jobs of rental storage attendant, an unskilled light job; vehicle deliverer; a semi-skilled, light job; and gatekeeper, a semi-skilled, light job. Oatman is 44 years old, and he is not subjected to permanent disability for the rest of his life.

III.

We have no difficulty with the hypothetical question put to the vocational expert describing an individual who was 44 years of age; had a high school general equivalency diploma; had past work experience similar to Oatman's; could perform light work; could not perform repetitious or continual forceful pushing and pulling activities or forceful twisting, repetitious twisting of the hands; must avoid exposure to concentrations of respiratory irritants including heavy amounts of dust or farm dirt, smoke or fumes, or other respiratory solvents; and could have only occasional or intermittent contact with the public or co-workers.

IV.

Appellant had the burden of establishing her entitlement to Social Security disability benefits. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999). We review the decision of the district court de novo to ensure that there is substantial evidence to support the decision of the Commissioner and that the decision is free of legal error. 42 U.S.C. § 405(g); Meanel, 172 F.3d at 1113. Substantial evidence "'means such relevant evidence as a reasonable mind might accept as

adequate to support a conclusion.'" Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)). It is more than a scintilla but less than a preponderance, Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997), and "does not mean a large or considerable amount of evidence," Pierce v. Underwood, 487 U.S. 552, 565 (1988). If the evidence can reasonably support either confirming or reversing the Commissioner's decision, we may not substitute our judgment for that of the ALJ. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999). The Commissioner's findings must be upheld if they are supported by inferences which can be reasonably drawn from the record. Gallant v. Heckler, 753 F.2d 1450, 1452-1453 (9th Cir. 1984). Even if the evidence is susceptible to more than one rational interpretation, the ALJ's conclusion must be upheld. Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999). If there is not evidence of malingering, and a claimant produces objective medical evidence of an underlying impairment which could reasonably be expected to produce some degree of pain or other symptoms, the ALJ may reject the claimant's testimony about the severity of the alleged pain or other symptoms "by offering specific, clear and convincing reasons for doing so." Smolen, 80 F.3d at 1281-1282 (citing Cotton v. Bowen, 799 F.2d 1403, 1407-1408 (9th Cir. 1986) (per curiam)). "'The ALJ is responsible for determining

credibility, resolving conflicts in medical testimony, and for resolving ambiguities.'" Meanel, 172 F.3d at 1113 (quoting Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)); Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996) (per curiam); Allen v. Heckler, 749 F.2d 577, 580 n.1 (9th Cir. 1985).

Measuring this appeal with the foregoing legal precepts, we conclude that substantial evidence supports the Commissioner's determination and that the ALJ committed no legal error.

We have considered all the contentions presented by the parties and conclude that no further discussion is necessary.

AFFIRMED.